86-477

No.

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

RICHARD H. SCHURMAN, JOHN W. SCHURMAN,

RICHARD W. CLARK STEVEN M. REITER

Petitioners

vs.

UNITES STATES PATENT AND TRADEMARK OFFICE

Respondent

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13 pp

QUESTION PRESENTED

Whether the lower court understood the distinct differences between the Petitioner's patent application entitled "Apnea Monitor" (Serial No. 423,178) and the references cited against the application by the United States Patent and Trademark Office.

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Court of Appeals Deicsion

No.

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United States Patent and Trademark Office

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Richard H. Schurman, John W. Schurman, Richard W. Clark and Steven M. Reiter hereby petition that a writ of Certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Federal Circuit dated June 25, 1986 and issued as a mandate on August 28, 1986

JURISDICTION AND STATUTES INVOLVED

The Federal Circuit Court's judgment was entered on 25 June, 1986. A Petition for Reconsideration was filed. The lower court in an order issued on 23 July, 1986 denied the Petition for Reconsideration.

The statutory provision under which the United States Supreme Court can review the judgment of the Court of Appeals for the Federal Circuit are 35 U.S.C. 141 and 28 U.S.C. 2101.

It is respectfully requested that the Supreme Court review the judgment of the lower court.

STATEMENT OF THE CASE

The invention involves the directing of two or more distinct and separate monochromatic light waves to a fluid. The initial intensity of each of the

separate monochromatic light sources is maintained at a predetermined constant intensity. The ratio of the absorption of each light wave in the fluid is determined by comparing the final intensity of each light wave with the initial intensity of each light wave. None of the existing patent references cited by the U.S. Patent and Trademark Office described such a method or apparatus.

All of the references cited by the U.S. Patent and Trademark Office describe methods or apparatus that apply full power to the polychromatic or wide-spectrum light source and calculates the absorption characteristic by measuring a variable output obtained from light sensitive detector.

The Petitioners' method and apparatus describe applying power to a monochromatic light source in such a manner as to establish the initial intensity of the monochromatic light source. Power is again applied to the monochromatic light source in such a manner as to establish a final intensity. The comparison and subsequent difference between the initial and the final intensity establish the ratio of absorption of the fluid being tested.

The Petitioners' believe that their method and apparatus is distinctly unique and therefore patentable because all of the intelligence is obtained from the incremented application of power to the light source(s).

All of the references cited by the

Patent Office teach of applying non-incremented power to the light source and deriving the intelligence from the incremented signal from the detector without regard for the comparison of initial and final intensities of the light source.

It is important to note that if any of the references cited against the Petitioners' method and apparatus by the Patent Office were taken in part or whole either singularly or in combination the references could not and would not be in any manner similar to the method and apparatus described by the Petitioners'.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

The appellants' question whether the lower court understood the unique method amd apparatus that employs a novel and heretofore unknown approach to determine the color characteristic of a fluid by establishing and comparing the initial and final intensities of monochromatic light sources.

Further, the appellants' question whether the lower court recognized that the references cited by the Patent Office are totally different in method and apparatus to the appelllants' method and apparatus. The obvious test being could one take a part(s) and/or the total referenc(s) and duplicate the method and apparatus described by the appellants.

The answer is an unequivical no. It would be impossible to derive a similar method and apparatus.

CONCLUSIONS

For the reasons stated:

1. The uniqueness of the Petitioners' method and apparatus of determining the color characteristics of a fluid by establishing an initial and a final intensity of a monochromatic light source and then comparing the intensities to elicit a ratio of absorption based upon intelligent incremented control of the light source.
2. The inability of the references cited to be combined in any manner to form and result in any similarity to the Petitioners' method and apparatus.

The Petitioners' respectfully request that a Writ of Certiorari to review the decision of the Court of Appeals for the Federal Circuit be granted.

Respectfully submitted,

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United States Court of Appeals for the Federal Circuit

IN RE: RICHARD H. SCHURMAN,
JOHN W. SCHURMAN, ET AL.

NO. 86-779

Judgment

ON APPEAL from the BOARD OF APPEALS, PATENT & TRADEMARK OFFICE
IN CASE NO(S). 423,178
This CAUSE having been heard and considered, it is
ORDERED and ADJUDGED:

AFFIRMED

ENTERED BY ORDER OF THE COURT

DATED June 25, 1986

By: Diane Frye, Chief Deputy Clerk
FRANCIS X. GINDHART, CLERK

ISSUED AS A MANDATE: August 28, 1986

APPENDIX